

March 17, 2025

RE: SCR 4019

Chairperson Heinert, Vice Chairperson Schrieber-Beck, and Distinguished Members of the Committee:

My name is Teresa Olafson, and I live in Fargo. I deeply appreciate the opportunity to testify before you today on an issue of great significance—addressing disparities in academic outcomes for students in special education and ensuring equitable and adequate education for all students, regardless of disability status.

Historical Context and the Commitment to Education in North Dakota

In 1972, an obscure lawsuit was filed in North Dakota that established groundbreaking educational equity in our state and nation. The case, *In Interest of G.H.*, issued a ruling by North Dakota Supreme Court affirming both due process and equal protection rights for children with disabilities in 1974. You might wonder why I reference this case, but it has significant importance because it predates the passing of the Federal Public law, now known as IDEA. North Dakota has always valued and delivered high quality education for all children- with all abilities.

North Dakota has a long and dedicated history of upholding its constitutional mandate to educate all children, *Anderson v. Breithbarth* even before achieving statehood. This commitment was reaffirmed in (1931), which established the right of children to attend free public school based on residency status. However, despite this legal foundation, disparities persist—particularly for students served through special education.

A paradox now exists: North Dakota has historically championed educational access, yet students with disabilities continue to face systemic barriers. This underscores the need for a comprehensive legislative study to evaluate the state’s adherence to its own Supreme Court rulings and constitutional obligations. Today, most individuals are focusing on a federal public law, known as the Individuals with Disabilities Education Act. While this is an important fiscal funding scheme, we have been assured that federal dollars will remain

intact but with greater state control. This is the call for stewardship of our local, state, and federal dollars ensuring North Dakota is upholding its constitutional mandate of providing an equitable and adequate education for all children.

The Need for a Legislative Study

A study is necessary to assess:

1. **Disparities in Academic Outcomes** – Achievement gaps in literacy, mathematics, graduation rates, and college/career readiness among students with disabilities.
2. **Resource Allocation and Funding** – Ensuring schools receive equitable funding to support specialized instruction, assistive technology, and necessary accommodations.
3. **Transparency and Accountability** – Investigating whether parents and legislators have full access to budget spending and student placement decisions.
4. **Impact of Non-Educational Placements** – Evaluating the effects of alternative placements that remove students from academic instruction while continuing to generate school district revenue.
5. **Effectiveness of Legislative Funding Initiatives** – Analyzing outcomes of state-funded initiatives such as the North Dakota Lighthouse initiative for data collection.

North Dakota's Declining Student Outcomes Despite Increased Funding

Despite significant investments in education, outcomes for marginalized student populations have worsened:

- **In 2002, North Dakota's average K-12 test score was 224 compared to the national average of 217.**
- **By 2022, North Dakota's average fell to 218, barely above the national average of 216.**
- **Fourth grade reading proficiency: 70% of students are not proficient.**

- **Math proficiency for students with IEPs dropped from 56.4% in 2010 to just 9.05% in 2022.**
- **Reading proficiency for students with IEPs fell from 58.1% in 2010 to 12.3% in 2022.**

Additionally, the North Dakota K-12 Educational Coordination Council reported:

- **Literacy disparity rates for students with disabilities at 86%, Native American students at 81.7%, and students in poverty at 76.8%.**
- **Math disparity rates for students with disabilities remain alarmingly high.**

While North Dakota has invested in costly behavioral programs, it has failed to prioritize academic instruction—resulting in declining literacy rates and widening achievement gaps.

The Impact of Non-Educational Placements on Special Education Funding

The current funding model for special education includes substantial allocations for non-educational placements, yet transparency regarding the effectiveness and impact of these funds remains limited. In the 2019-21 biennium:

- **Agency Placement: \$24.975 million; the state reimbursed \$19.9 million, with \$7 million allocated to public schools.**
- **School Placement: \$32.78 million; the state reimbursed \$6.7 million, with \$5.46 million directly benefiting public schools.**

While these figures represent a significant financial investment, we must critically examine whether these funds are being used to enhance educational access and improve outcomes for students with disabilities. Given the continued decline in academic performance, it is imperative to assess how funding decisions align with student success and whether additional oversight and accountability measures are needed.

Our Journey and the Need for Reform

In July 2022, the North Dakota Department of Public Instruction (DPI) issued a written response to my question about Student Contracts under N.D.C.C. 15.1-29-14, stating that Individual Education Program (IEPs) do not dictate what services are to be provided ensuring free, appropriate public education. Remember, North Dakota has established that public education must be “inclusive and comprehensive” per the ruling in *Anderson v. Breithbarth* in 1931.

Through a Freedom of Information Act (FOIA) request, I discovered that my child’s school received \$75,000 annually for services that were not being delivered in a placement I never knew existed. Through an Individual Education Program (IEP), he was restricted in his access to school, deprived of academic instruction, and provided no certified teacher or assistive technology. Unknown to me, he was served in a Non-Educational Placement that allocated additional funds to the district while denying him his right to an education. Knowing these decisions occurred without my involvement or my consent, was confusing. It remains confusing to this day as no one can explain how School placement for non-educational service occurs for students with disabilities, how it is determined, and what are the services that are delivered and where is the education for the child. Most importantly, to what extent did this placement allow my third-grade child to have a reading proficiency of 0.1% and a math of 2% while my LEA created a revenue of \$76,000 for a 3 hour a day program for 9 months? To arrive at any understanding, we need to study how we got here.

This journey, which began in 2015, has been life changing. I have met with officials at local, state, and federal levels—only to encounter repeated refusals for collaboration for any improvement or change. This testimony today is not just about my child; it is about every child in North Dakota whose educational rights have been systematically overlooked.

Key Questions That Must Be Addressed

To ensure accountability and transparency, we must ask:

- Does North Dakota have a data accountability system that is easily understood by all stakeholders?

- Are parents informed about School Placements for students with disabilities that grant significant state funds but may deprive students of equal educational opportunities?
- Does the state’s accountability system ensure students are learning in high-quality educational environments?
- What measures are in place to ensure student success across all demographics?
- Is there transparency regarding budget spending and resource allocation for students with disabilities?

Conclusion: A Call for Action for Us All

North Dakota’s history demonstrates a longstanding commitment to education, but the current reality does not reflect this legacy.

Before federal laws like the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act, and the Americans with Disabilities Act, North Dakota led the way in guaranteeing educational rights. We must now reaffirm that commitment by ensuring that literacy, the foundation of all learning—is prioritized and protected. This is why our constitution has tasked legislature to ensure all steps have been taken to address illiteracy; initiative-taking measures rather than reactive and repairing work.

It is imperative that this legislative body authorize a comprehensive, independent study to determine the most effective path forward in returning North Dakota to its historic role as a leader in public education. The data is clear: while funding has increased, student outcomes have deteriorated—particularly for those in special education. Without conducting a study, there can be no purposeful determination on how best to allocate our state tuition or how to determine best whether those state or federal dollars are spent upholding a constitutional mandate of equitable and adequate education for all students.

Accountability, transparency, and equity must be restored to our educational system. An audit should be welcomed, not resisted, to ensure that no student goes uneducated to our North Dakota standards.

I urge this committee to take immediate action in authorizing this study. Thank you for your time and attention, and I welcome any questions you may have.

Teresa Olafson

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